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**CHECKMATE.COM INC.**

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ARJUN VASAN,

Plaintiff,

v.

CHECKMATE.COM, INC.,

Defendant.

CHECKMATE.COM, INC.,

Counterclaim-Plaintiff,

v.

ARJUN VASAN,

Counterclaim-  
Defendant.

Case No. 2:25-cv-00765-MEMF-AS

Hon. Alka Sagar

DISCOVERY MATTER

**CHECKMATE.COM INC.'S  
OPPOSITION TO VASAN  
VARADARAJAN'S MOTION FOR  
PROTECTIVE ORDER AND TO  
QUASH OR MODIFY SUBPOENA**

*[Filed concurrently herewith  
Declaration of Rebecca I. Makitalo]*

Hearing Date: November 20, 2025  
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Courtroom: 540

Complaint Filed: January 28, 2025  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

There is no reasonable dispute that Checkmate.com Inc. (“Checkmate”)’s subpoena, validly issued and served on Vasana Varadarajan *months* ago, seeks to obtain documents and testimony directly relevant to both Plaintiff Arjun Vasana (“Plaintiff”)’s and Checkmate’s claims and defenses in this action. Mr. Varadarajan himself has inserted himself as a witness in sworn written testimony relied upon by Plaintiff, in which he not only admits to possessing relevant information, but urges the Court to accept his version of events. That is far more than is sufficient to compel Mr. Varadarajan’s production and testimony under Rule 45.

Nevertheless, Mr. Varadarajan has refused to comply with Checkmate’s subpoena and, in his latest attempt to skirt his obligations, belatedly seeks a court order to excuse his non-compliance *nearly a month after failing to appear at his scheduled deposition*. His fundamentally flawed and untimely motion does not absolve him from the consequences of his blatant refusal to comply with the subpoena – equivalent, as the Court is aware, to a court order – to appear for deposition on September 22, 2025. If he sought to be excused from compliance, he was required to make his motion *before* the compliance date passed. Instead, coordinating strategy with Plaintiff, he obfuscated and delayed until *after* Checkmate had already moved to compel and for contempt. (Dkt 101).

As described in the papers already before the Court, in the month leading up to his deposition, Checkmate’s counsel made multiple attempts to accommodate Mr. Varadarajan’s legitimate scheduling issues and address the scope of production to alleviate any undue burden. Despite Checkmate’s repeated efforts, Mr. Varadarajan explicitly refused to comply without an additional court order and failed to appear for his deposition.

Not only is his failure to appear at his deposition a defiance of a court order and his motion to “excuse” it untimely, but it is also baseless and unsupported by

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1 evidence. In support of his belated motion, Mr. Varadarajan vaguely cites “health  
2 and logistical constraints” (Dkt. 106 at 3:5, 5:6) without providing any specific facts.  
3 He fails to supply this Court with the requisite “good cause” for a protective order to  
4 issue and similarly, fails to identify an evidentiary basis for the nature and extent of  
5 the “undue burden” he claims to support his motion to quash or modify the subpoena.  
6 Mr. Varadarajan’s Motion for Protective Order and to Quash or Modify Subpoena  
7 should be denied.

## 8 II. STATEMENT OF FACTS

### 9 A. Checkmate Serves Mr. Varadarajan With The Subpoena

10 On August 14, 2025, Mr. Varadarajan was personally served with a subpoena  
11 at his home residence in Cerritos, California. *See* Declaration of Rebecca I. Makitalo  
12 (“Makitalo Decl.”) at ¶¶ 2-3, Ex. A (the “Subpoena”). The Subpoena commanded  
13 him to produce documents and appear for deposition at the offices of K&L Gates  
14 LLP, located in Los Angeles, California, well within 100 miles of his residence. *Id.*  
15 The Subpoena clearly provided for Mr. Varadarajan’s expected compliance date of  
16 September 22, 2025. *Id.*

17 The Subpoena served on Mr. Varadarajan seeks discovery directly relevant to  
18 the claims and defenses of both Plaintiff and Checkmate in this action. *See generally*  
19 Dkts. 10 (“Amended Complaint”), 71 (“Counterclaims”). Specifically, the  
20 documents sought in the Subpoena included, among other things, documents directly  
21 related to the VoiceBite Transaction, the authorship and ownership of the VoiceBite  
22 code, Mr. Varadarajan’s professional relationship with Plaintiff, including his role at  
23 Plaintiff’s prior companies, as well as documents and communications relating to the  
24 above-captioned action and the parties thereto. Makitalo Decl. at ¶ 3, Ex. A.

25 The testimony and documents sought in the Subpoena are also relevant to Mr.  
26 Varadarajan’s sworn declaration filed in the Southern District of New York in  
27 support of Plaintiff’s Motion to Dismiss, Transfer, or Stay. *See Checkmate.com, Inc.*  
28 *v. Vasan*, Dkt. 36, Case No. 1:25-CV-03181(JMF) (S.D.N.Y. Apr. 12, 2025).

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1 Specifically, Mr. Varadarajan explicitly states that he is in fact the “coauthor, with  
2 Arjun, of the functional code at question.” *Id.* at ¶ 6. Mr. Varadarajan also  
3 acknowledges his role as the “longtime technical advisor and collaborator of Arjun  
4 Vasan” and further declares to “have worked professionally with every member of  
5 the VoiceBite founding team at past companies, including CyborgOps and Presto.”  
6 *Id.* at ¶¶ 4-5. He also asserts that he witnessed the co-founders “negotiat[ing] and  
7 discuss[ing] every issue thorough and transparently” while the “VoiceBite team  
8 w[as] finalizing the merger with Checkmate.” *Id.* at ¶¶ 9-10.

9 The deposition testimony and documents requested in Checkmate’s Subpoena  
10 are also aligned with the sworn testimony Mr. Varadarajan has already provided on  
11 behalf of Plaintiff. This testimony, which Plaintiff consistently relies upon to support  
12 his own claims and defenses against Checkmate’s Counterclaims (*see* Dkt. 81), is  
13 directly relevant to the fraudulent sale of the VoiceBite code to Checkmate, a central  
14 issue in Checkmate’s Counterclaims. Furthermore, Checkmate’s Subpoena is not  
15 only pertinent to its Counterclaims, but Plaintiff has also made Mr. Varadarajan’s  
16 knowledge of VoiceBite’s proprietary code sold to Checkmate a central issue in this  
17 case through the allegations contained in his own Amended Complaint. (*See* Dkt. 10  
18 at ¶¶ 50, 99, 102, 108, 112, 113, and 124).

19 **B. Plaintiff Acknowledges And Immediately Objects To The**  
20 **Subpoena Served On Mr. Varadarajan**

21 Immediately after Mr. Varadarajan was served at his home residence, where  
22 Plaintiff also resides, Plaintiff fired off several angry emails to Checkmate’s counsel,  
23 asserting that Mr. Varadarajan “*has already submitted a declaration; a broad*  
24 *deposition now is cumulative and harassing*” and otherwise attempting to interfere  
25 with Checkmate’s entitlement to obtain discovery from Mr. Varadarajan in this  
26 action. Makitalo Decl. at ¶¶ 4-5, Ex. B. He further demanded Checkmate “*[w]ithdraw*  
27 *or hold in abeyance the subpoena to Vasan Varadarajan*” (*id.*) until the Court sets  
28 phasing of discovery, as mentioned by Plaintiff in the Joint Report (Dkt. 78 at 11), a

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1 request which Honorable Frimpong denied. (Dkt. 88). On August 15, 2025 – less  
2 than 24 hours after Mr. Varadarajan was served with the Subpoena – Plaintiff was  
3 provided with notice of the Subpoena. Makitalo Decl. at ¶¶ 6-7, Ex. C (the “Notice”).

4 Shortly after his slew of demanding emails, in a further attempt to circumvent  
5 the discovery process and obstruct Checkmate’s right to gather relevant evidence to  
6 support its claims and defenses, Plaintiff – clearly lacking both standing and a basis  
7 to seek emergency relief – brought an *Ex Parte* Application for a Temporary  
8 Protective Order to (1) Stay Nonparty Subpoenas and (2) Quash Non-Compliant  
9 Subpoenas to Robert Nessler and Vasana Varadarajan (“*Ex Parte* Motion”) before this  
10 Court. (Dkt 80). Recognizing Plaintiff’s failure to demonstrate standing to challenge  
11 Mr. Varadarajan’s Subpoena or present actual evidence that the documents sought in  
12 the Subpoena implicated Plaintiff’s privilege, Magistrate Judge Jean P. Rosenbluth  
13 denied Plaintiff’s *Ex Parte* Motion. (Dkt. 85).

14 **C. Checkmate Engages In Continuous Good Faith Efforts To Meet**  
15 **And Confer And Secure Mr. Varadarajan’s Compliance With**  
16 **The Subpoena**

17 On August 28, 2025, clearly coordinating his strategy with Plaintiff, somebody  
18 purporting to be Mr. Varadarajan provided objections to the Subpoena via email  
19 correspondence to Checkmate’s counsel. Makitalo Decl. at ¶¶ 8-9, Ex. D (the  
20 “Objections”). Among Mr. Varadarajan’s Objections, included demands that his  
21 deposition “proceed remotely,” “be limited to no more than 90-120 minutes on the  
22 record,” and “be rescheduled to a mutually agreeable date” and further indicated he  
23 “*would not appear for any deposition absent a court order.*” *Id.* Mr. Varadarajan  
24 also provided written objections to Checkmate’s document requests and claimed that  
25 his “*[w]ritten objections suspend any duty to produce unless and until the Court*  
26 *orders otherwise.*” *Id.*

27 In the month leading up to the compliance date, Checkmate’s counsel  
28 attempted to accommodate Mr. Varadarajan’s legitimate scheduling issues and

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1 discuss the scope of production to reduce any undue burden. *Id.* at ¶¶ 10-34, Exs. E-  
2 P. Despite Checkmate’s repeated efforts, Mr. Varadarajan explicitly refused to  
3 comply with the Subpoena absent an additional court order. *Id.* at ¶¶ 8-9, Ex. D.

4 On September 22, 2025, Mr. Varadarajan failed to appear for his deposition  
5 scheduled at 11 a.m. at K&L Gates LLP’s offices in Los Angeles and produce the  
6 documents as requested in the Subpoena. *Id.* at ¶ 28. Thereafter, Checkmate  
7 continued its efforts to meet and confer with Mr. Vasan in good faith to secure his  
8 compliance with the Subpoena and provided alternative dates for compliance, which  
9 were unsuccessful. *Id.* at ¶¶ 29-34, Exs. N-P. Recognizing that it had reached an  
10 impasse with Mr. Varadarajan and could no longer excuse his non-compliance with  
11 the Subpoena, Checkmate indicated to Mr. Varadarajan its intention to seek the  
12 Court’s intervention and file a motion to compel compliance with the Subpoena and  
13 for contempt. *Id.* ¶¶ 33-34, Ex. P.

14 **D. Checkmate Moves To Compel Compliance With Subpoena To**  
15 **Vasan Varadarajan And For Contempt**

16 On October 14, 2025, Checkmate filed its Motion to Compel Compliance with  
17 Subpoena to Vasan Varadarajan and for Contempt (Dkt. 101 (“Motion to Compel  
18 Compliance with Subpoena”)) before Magistrate Judge Jean P. Rosenbluth and  
19 served Mr. Varadarajan with its Motion to Compel Compliance with Subpoena on  
20 October 15, 2025 via email correspondence (the sole method by which Mr.  
21 Varadarajan had served his Objections to the Subpoena) and also by U.S. mail. (Dkt.  
22 102). Thereafter, on October 20, 2025, the above-captioned action was reassigned to  
23 Magistrate Judge Alka Sagar (*see* Dkt. 103) and the hearing date for Checkmate’s  
24 Motion to Compel Compliance with Subpoena was continued to November 20, 2025.  
25 (Dkt. 105). On October 20, 2025 – only after Checkmate first filed its Motion to  
26 Compel Compliance with Subpoena – did Mr. Varadarajan file his Motion for  
27 Protective Order and to Quash or Modify Subpoena (Dkt. 106 (“Motion for  
28 Protective Order”)). On October 27, 2025, the Court advanced Mr. Varadarajan’s

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1 hearing date on his Motion for Protective Order to November 20, 2025, the same date  
2 as Checkmate’s hearing on its Motion to Compel Compliance with Subpoena.

3 **III. ARGUMENT**

4 **A. Checkmate’s Subpoena Seeks Tailored Discovery From Mr.**  
5 **Varadarajan**

6 As an initial matter, parties may obtain discovery regarding any nonprivileged  
7 matter that is relevant to any party’s claim or defense. Fed. R. Civ. P. 26(b)(1);  
8 *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S. Ct. 2380, 57 L. Ed. 2d  
9 253 (1978) (citation omitted) (The relevance standard is necessarily broad in scope  
10 in order “to encompass any matter that bears on, or that reasonably could lead to other  
11 matter that could bear on, any issue that is or may be in the case.”). Further, a party  
12 may depose “any person” by oral questions by serving a subpoena on the nonparty,  
13 commanding a nonparty “to attend and testify.” Fed. R. Civ. P. 30(a), 45(a). “The  
14 scope of discovery of third parties under Rule 45 is the same as that applicable to  
15 Rule 34 and the other discovery rules.” *Thoma v. VXXN Grp., LLC*, No. CV-23-04901-  
16 WLH (AGRX), 2024 WL 4406947, at \*1 (C.D. Cal. July 9, 2024) (citation omitted);  
17 *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 409  
18 (C.D. Cal. 2014) (“The same broad scope of discovery set out in Rule 26 applies to  
19 the discovery that may be sought pursuant to Rule 45.”). “District courts have broad  
20 discretion in determining relevancy for discovery purposes.” *Survivor Media, Inc. v.*  
21 *Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005).

22 The Subpoena served on Mr. Varadarajan seeks discovery that is undeniably  
23 relevant to the core issues of this case. As outlined in Checkmate’s Counterclaims  
24 (Dkt. 71) and as *Mr. Varadarajan has testified in writing and under oath*, Mr.  
25 Varadarajan has sworn to authorship and ownership over the “proprietary” code that  
26 VoiceBite sold to Checkmate. The document requests in the Subpoena are directly  
27 related to these Counterclaims, encompassing documents that relate directly to,  
28 among other things, the VoiceBite Transaction, the authorship and ownership of the

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1 VoiceBite code, and Mr. Varadarajan’s professional relationship with Plaintiff  
2 (including his role at Plaintiff’s prior companies), as well as documents and  
3 communications relating to the above-captioned action and the parties thereto.  
4 Makitalo Decl. at ¶ 3, Ex. A.

5 Mr. Varadarajan’s assertion that his “only asserted relevance is that the  
6 counterclaims name him in connection with alleged claims to ‘VoiceBite proprietary  
7 software,’ and that a single 2018 file header (e.g., the counterclaim-exhibited  
8 audio.py) lists him as a co-author” (Dkt. 106 at 5:24-26) flies in the face of his own  
9 testimony. His own declaration, which Plaintiff repeatedly relies upon in this action  
10 (see Dkt. 81 “Second Motion to Dismiss”), explicitly states that he is indeed the “**co-**  
11 **author, with Arjun, of the functional code at question.**” *Checkmate.com, Inc. v.*  
12 *Vasan*, Dkt. 36 at ¶ 6, Case No. 1:25-CV-03181(JMF) (S.D.N.Y. Apr. 12, 2025).  
13 Furthermore, Mr. Varadarajan openly acknowledges his role as the “**longtime**  
14 **technical advisor and collaborator of Arjun Vasan**” and further declares to “**have**  
15 **worked professionally with every member of the VoiceBite founding team at past**  
16 **companies, including CyborgOps and Presto.**” *Id.* at ¶¶ 4-5. He also asserts that he  
17 witnessed the co-founders “**negotiat[ing] and discuss[ing] every issue thorough and**  
18 **transparently**” while the “**VoiceBite team w[as] finalizing the merger with**  
19 **Checkmate.**” *Id.* at ¶¶ 9-10.

20 Mr. Varadarajan’s attempt to avoid his discovery obligations and characterize  
21 Plaintiff’s reliance upon his declaration in the action pending before this Court as  
22 “not relevant” is absurd. (Dkt. 106 at 6:4). Again echoing Plaintiff, Mr. Varadarajan  
23 himself admits that Checkmate’s Counterclaims before this Court are the same claims  
24 that Checkmate brought against Plaintiff before the court in New York (see *id.* at 6:4-  
25 6 (“Checkmate voluntarily dismissed the SDNY case after full briefing on a motion  
26 to dismiss and then re-pled the same theories as counterclaims in this Court.”)) and  
27 the same claims for which Mr. Varadarajan voluntarily submitted sworn testimony  
28 in support of Plaintiff’s Motion to Dismiss, Transfer, or Stay filed in the New York

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1 action. Plaintiff continues to rely on Mr. Varadarajan’s ***very same declaration*** in this  
2 action in support of his Second Motion to Dismiss Checkmate’s Counterclaims. (Dkt.  
3 81). The law does not permit Mr. Varadarajan to unilaterally serve as a witness solely  
4 for Plaintiff’s advantage by supplying testimony while evading his obligations under  
5 the Subpoena and Checkmate’s legal right to obtain discovery on the veracity of Mr.  
6 Varadarajan’s sworn statements. *See Hickman v. Taylor*, 329 U.S. 495, 507, 67 S. Ct.  
7 385, 392, 91 L. Ed. 451 (1947) (“Mutual knowledge of all the relevant facts gathered  
8 by both parties is essential to proper litigation.”).

9 Moreover, Checkmate’s Subpoena is not only relevant to Checkmate’s  
10 Counterclaims, but Plaintiff has also made Mr. Varadarajan’s knowledge a central  
11 issue in this case. Specifically, Plaintiff asserts in his Amended Complaint that  
12 Checkmate served a “Notice of Claim” which “den[ie]d him \$122,000 in severance”  
13 and “allege[d] Fraud and IP Misuse to justify withholding other owed payments,  
14 including \$450,000 in earned bonuses, without specifying actual damages.” (Dkt. 10  
15 at ¶ 50). Plaintiff also repeatedly references the “IP” and “technology” VoiceBite  
16 sold to Checkmate, which includes the VoiceBite code authored and owned by Mr.  
17 Varadarajan, in his claims, including for Unjust Enrichment (*see id.* at ¶ 99  
18 (“Defendant received substantial benefits from Plaintiff’s efforts, and those of the  
19 team he had assembled, including but not limited to: . . . Proprietary technology  
20 developed by Plaintiff and team, which accelerated time to market for the Voice AI  
21 product.”); *Id.* at ¶ 102 (“Regardless of contract enforceability, it is unjust for  
22 Defendant to benefit from Plaintiff’s labor, IP, and relationships without fair  
23 compensation.”)) and Civil Conspiracy: Fraudulent Inducement, Concealment and  
24 Extortion (*id.* at ¶ 113 (“Plaintiff and his team performing substantial integration  
25 work and building IP that would accrue exclusively to Defendant upon merger  
26 close.”); *Id.* at ¶ 124 (“[T]he entire merger was fraudulent—engineered to extract the  
27 founders’ technology, goodwill, and expertise without delivering the agreed  
28 compensation.”)).

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1 Plaintiff also makes numerous representations throughout his Amended  
2 Complaint characterizing VoiceBite's negotiations with Checkmate prior to entering  
3 into the Merger Agreement and related documents – negotiations which Mr.  
4 Varadarajan claims to have been a witness to. *See Checkmate.com, Inc. v. Vasan*,  
5 Dkt. 36 at ¶¶ 9-10, Case No. 1:25-CV-03181(JMF) (S.D.N.Y. Apr. 12, 2025) (“From  
6 observing, it was clear that Arjun, Christopher and Robert Nessler were equal  
7 partners in the negotiation and discussed every issue thoroughly and transparently.”).  
8 These references include accusations to support Plaintiff's claims for Promissory  
9 Fraud and Estoppel (Dkt. 10 at ¶ 108 (“The founders went into merger negotiations  
10 with greatly reduced leverage.”) and Civil Conspiracy: Fraudulent Inducement,  
11 Concealment and Extortion (*id.* at ¶ 112 (“[T]he founders found themselves having  
12 to repeatedly renegotiate agreed terms (both explicit and promised), reducing their  
13 leverage and placing them under significant duress while finalizing the merger”); *Id.*  
14 at ¶ 113 (“During the four months of premerger negotiations, Defendant pressured  
15 the founders by refusing their request for a consulting agreement.”)), among others.

16 Thus, the testimony and documents commanded by Checkmate from Mr.  
17 Varadarajan are directly relevant to the claims and defenses of both Plaintiff and  
18 Checkmate and are well-within Checkmate's entitlement to discovery pursuant to the  
19 Rules.

20 **B. Mr. Varadarajan's Motion Seeks Untimely Relief After The**  
21 **Date Of Compliance Indicated By Checkmate's Subpoena**

22 Mr. Varadarajan's Motion requesting relief from Checkmate's Subpoena  
23 commanding his appearance for deposition on September 22, 2025 should  
24 ***independently*** be denied as untimely. On August 14, 2025, Mr. Varadarajan was  
25 personally served with Checkmate's Subpoena to testify at a deposition and produce  
26 documents. Makitalo Decl. at ¶¶ 2-3, Ex. A. The Subpoena commanded his  
27 appearance for deposition on September 22, 2025 at the offices of K&L Gates LLP.  
28 *Id.* While Mr. Varadarajan may have served Checkmate with objections, such

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1 objections did not excuse Mr. Varadarajan from his required compliance with a court  
2 order to appear for his deposition on September 22, 2025. This is because “[w]hile a  
3 nonparty may challenge a subpoena duces tecum via written objection, *a deposition*  
4 *subpoena may only be challenged by moving to quash or modify the subpoena*  
5 *pursuant to Federal Rule of Civil Procedure 45(c)(3)(A), or by moving for a*  
6 *protective order pursuant to Rule 26(c).*” *HI.Q, Inc. v. ZeetoGroup, LLC*, No. MC  
7 22cv1440-LL-MDD, 2022 WL 17345784, at \*5 (S.D. Cal. Nov. 29, 2022) (citing 9  
8 James Wm. Moore, Moore’s Federal Practice § 45.30 (2007) (“The written objection  
9 procedure is available only for a subpoena commanding production or inspection  
10 ...”)); *BNSF Ry. Co. v. Alere, Inc.*, No. 18-CV-291-BEN-WVG, 2018 WL 2267144,  
11 at \*7 (S.D. Cal. May 17, 2018) (“When a nonparty wishes protection by the Court,  
12 the nonparty must seek out such protection, and the proper method to seek the Court’s  
13 assistance after being served with a subpoena to testify at a deposition is to file a  
14 motion to quash or modify the subpoena.”).

15 Rule 45(d)(3)(A) requires that a subpoena be quashed or modified on certain  
16 grounds where a *timely motion* is filed. Fed. R. Civ. P. 45(d)(3)(A). Courts have  
17 interpreted this to mean the motion must be made *before compliance with the*  
18 *subpoena is required*. See *Brown v. City of Needles*, No. 5:23-CV-01118-AB-SSC,  
19 2024 WL 5185327, at \*1 (C.D. Cal. Nov. 4, 2024) (citation omitted) (“[I]n Rule 45,  
20 it is reasonable to assume that the motion to quash should be brought before the  
21 noticed date of the scheduled deposition”); *S.L. v. Upland Unified Sch. Dist.*, No.  
22 EDCV182122JGBKKX, 2019 WL 8163805, at \*2 (C.D. Cal. Oct. 4, 2019) (citation  
23 omitted) (“Courts have generally interpreted ‘timely’ to mean within the time set in  
24 the subpoena for compliance.”); *Canton v. U.S. Foods, Inc.*, No.  
25 22CV04226TLTLJC, 2023 WL 4053798, at \*3 (N.D. Cal. June 16, 2023) (“[M]any  
26 courts in this Circuit have read Rule 45(d)(3)(A) to mean a motion is “timely” if filed  
27 before the compliance date designated in the subpoena.”); *Freed v. Home Depot*  
28 *U.S.A., Inc.*, No. 18CV359-BAS (LL), 2019 WL 183833, at \*4 (S.D. Cal. Jan. 14,

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1 2019) (“Motions to quash under Rule 45(d)(3)(A)(iii) are required to be filed in a  
2 “timely” fashion, which courts have read to mean before the compliance date  
3 designated in the subpoena.”).

4 Similarly, “[w]hile the express language of Rule 26 does not set time limits  
5 within which a motion for a protective order must be made, there is an implicit  
6 requirement that the motion be timely or reasonable.” *Berry v. Baca*, No. CV01-  
7 02069 DDP (SHX), 2002 WL 1777412, at \*2 (C.D. Cal. July 29, 2002) (citation  
8 omitted). Generally, “[a] motion for protective order is timely if made **prior to the**  
9 **date set for the discovery.**” *Seminara v. City of Long Beach*, 68 F.3d 481 (9th Cir.  
10 1995) (citation omitted) (emphasis added); *see also HI.Q, Inc.*, 2022 WL 17345784,  
11 at \*6 (citation omitted) (“A motion to quash or modify must be made promptly,  
12 allowing it to be heard *and granted before* the scheduled deposition.”) (emphasis in  
13 original); *Anderson v. Abercrombie & Fitch Stores, Inc.*, No. 06CV991-  
14 WQH(BLM), 2007 WL 1994059, at \*8 (S.D. Cal. July 2, 2007) (“To excuse  
15 compliance, a motion to quash must be made before the production or deposition date  
16 identified in the subpoena.”); *Moore v. Chase, Inc.*, No. 1:14-CV-01178-SKO, 2015  
17 WL 4393031, at \*6 (E.D. Cal. July 17, 2015) (“A party objecting to a subpoena must  
18 file a motion to quash the subpoena before the deposition date identified in the  
19 subpoena (when relevant) or the actual date of production of the requested  
20 documents, as is required by the Federal Rules.”).

21 Mr. Varadarajan cannot and does not dispute that he failed to file a timely  
22 motion to quash the Subpoena, nor did he seek a protective order before the  
23 compliance date of September 22, 2025, requiring his appearance for deposition at  
24 K&L Gates LLP’s offices in Los Angeles, California. Instead, he delayed until  
25 October 20, 2025, **nearly a month after the deadline for compliance and more than**  
26 **two months after having been served**, to seek a protective order and an order  
27 quashing or modifying the Subpoena at issue. *See* Dkt. 106; Makitalo Decl. at ¶¶ 2-  
28 3, Ex. A. Mr. Varadarajan was required to seek his requested relief **before the**

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1 ***compliance date to appear for deposition*** as clearly indicated in Checkmate's  
2 Subpoena.

3 No good cause exists for this delay. Indeed, Mr. Varadarajan fails to cite any  
4 authority for the proposition that his Objections alone were legally sufficient for his  
5 failure to appear at his scheduled deposition or delay in seeking a court order for  
6 relief from same – because there is none. His motion should be denied on this basis  
7 alone.

8 **C. Mr. Varadarajan Fails To Show Good Cause For A Protective**  
9 **Order**

10 Federal Rule of Civil Procedure 26(c) provides that a “court may, ***for good***  
11 ***cause***, issue an order to protect a party or person from annoyance, embarrassment,  
12 oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c) (emphasis added).  
13 “For good cause to exist, the party seeking protection bears the burden of showing  
14 specific prejudice or harm will result if no protective order is granted.” *Phillips ex*  
15 *rel. Ests. of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002). “Broad  
16 allegations of harm, unsubstantiated by specific examples or articulated reasoning,  
17 do not satisfy the Rule 26(c) test.” *Younger Mfg. Co. v. Kaenon, Inc.*, 247 F.R.D.  
18 586, 588 (C.D. Cal. 2007) (quoting *Beckman Indus., Inc. v. International Ins. Co.*,  
19 966 F.2d 470, 476 (9th Cir.1992)); *see also Solis v. Forever 21, Inc.*, No. CV 12-  
20 09188 MMM MRWX, 2013 WL 1319769, at \*7 (C.D. Cal. Mar. 7, 2013) (citation  
21 omitted) (“The request for a protective order must be based on a specific  
22 demonstration of facts rather than speculative statements about the need for a  
23 protective order and generalized claims of harm”); *Gulf Oil Co. v. Bernard*, 452 U.S.  
24 89, 102 n.16, 101 S.Ct. 2193, 68 L.Ed.2d 693 (1981) (internal quotations and citation  
25 and omitted) (“To establish ‘good cause’ for a protective order under [Federal Rule  
26 of Civil Procedure] 26(c), [t]he courts have insisted on a particular and specific  
27 demonstration of fact, as distinguished from stereotyped and conclusory  
28 statements.”).

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1 Mr. Varadarajan has failed to meet his burden to justify the issuance of a  
2 protective order. He has “presented absolutely no evidence showing a specific and  
3 particular need for such protective order, [his] request is without merit.” *Cadent Ltd.*  
4 *v. 3M Unitek Corp.*, 232 F.R.D. 625, 629 (C.D. Cal. 2005) (denying protective order  
5 seeking to have depositions take place at deponents’ places of business); *Younger*  
6 *Mfg. Co.*, 247 F.R.D. at 588 (denying protective order because the party seeking the  
7 protective order “has not met its burden to show plaintiff’s deposition of [deponent]  
8 is for harassment or that all of the information plaintiff seeks from [deponent] is  
9 protected by the attorney-client privilege or work product doctrine.”). Further, Mr.  
10 Varadarajan fails to allege that any specific prejudice or harm will result if his motion  
11 for a protective order is denied, only asserting vague and unsupported statements of  
12 health constraints and caretaking duties. (Dkt. 106 at 6:24-7:1). He claims he “should  
13 not be forced to disclose health details publicly” and asserts only generalized  
14 statements including that “in-person testimony at counsel’s office is unnecessary and  
15 unduly burdensome for a non-party and his family.” (*Id.* at 7:2). These vague and  
16 conclusory statements are insufficient to meet the requirement for “a specific  
17 demonstration of facts” necessary for a court to issue a protective order. As no such  
18 showing has been made, or even attempted here, the Court should deny Mr.  
19 Varadarajan’s request for a protective order.

20 **D. There Is No Basis To Quash Or Modify The Subpoena**

21 No basis exists to quash or modify the subpoena. “As an initial matter, the  
22 party who moves to quash a subpoena has the ‘burden of persuasion’ under Rule  
23 45(c)(3).” *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005) (citations  
24 omitted); *see also Goodman v. United States*, 369 F.2d 166, 169 (9th Cir. 1966)  
25 (citing *Sullivan v. Dickson*, 283 F.2d 725 (9th Cir.1960) (“The burden of showing  
26 that a subpoena is unreasonable and oppressive is upon the party to whom it is  
27 directed.”). “The party issuing the subpoena must demonstrate[, in turn,] that the  
28 information sought is relevant and material to the allegations and claims at issue in

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1 the proceedings.” *Green v. Baca*, 226 F.R.D. 624, 654 (C.D. Cal. 2005) (citing *Night*  
2 *Hawk Ltd. v. Briarpatch Ltd.*, L.P., No. 03 Civ.1382, 2003 WL 23018833, at \*8  
3 (S.D.N.Y. Dec. 23, 2003)).

4 While courts “are sensitive to the imposition of large discovery costs on non-  
5 parties and recognize the special need to protect them,” the Ninth Circuit has declined  
6 to “read ‘undue burden’ differently just because a non-party was subpoenaed.” *Mount*  
7 *Hope Church v. Bash Back!*, 705 F.3d 418, 429 (9th Cir. 2012); *Lee v. Glob. Tel\*Link*  
8 *Corp.*, No. CV152495ODWPLAX, 2017 WL 10575166, at \*3 (C.D. Cal. Sept. 6,  
9 2017) (citation omitted) (“Undue burden in the context of third-party discovery is the  
10 same standard as used regarding discovery served on parties to the litigation.”). In  
11 order “[t]o meet its burden, the objecting party ***must provide specific facts that***  
12 ***indicate the nature and extent of the burden.***” *Lee*, 2017 WL 10575166, at \*3  
13 (emphasis added). “An evaluation of undue burden requires the court to weigh the  
14 burden to the subpoenaed party against the value of the information to the serving  
15 party.” *Moon*, 232 F.R.D. at 637 (citation and quotations omitted) (finding this  
16 evaluation “requires the court to consider: such factors as relevance, the need of the  
17 party for the documents, the breadth of the document request, the time period covered  
18 by it, the particularity with which the documents are described and the burden  
19 imposed.”).

20 Mr. Varadarajan has not met his burden of persuasion to support a basis to  
21 quash the Subpoena. As detailed above, Checkmate has clearly demonstrated that the  
22 information sought in the Subpoena is relevant and material to both parties’ claims  
23 and defenses at issue in this action. Mr. Varadarajan has not provided any evidentiary  
24 basis to support his speculative claim that Checkmate’s Subpoena imposes an “undue  
25 burden” or should otherwise be quashed.<sup>1</sup> His motion is filled with vague and

26 <sup>1</sup> Mr. Varadarajan also claims that the Subpoena should be quashed because  
27 Checkmate did not provide the required prior notice. Dkt. 106 at 3:16-18. Mr.  
28 Varadarajan explicitly acknowledges, however, that Checkmate did provide Plaintiff  
with notice of the Subpoena and in fact, Plaintiff learned of the Subpoena after his  
father had been served. *Id.* at 3:16-17. Furthermore, shortly after, Plaintiff brought

1 conclusory statements, such as the assertion that Checkmate’s Subpoena “document  
2 categories are facially overbroad and duplicative of party discovery” (Dkt. 106 at  
3 6:17-18) and merely alludes to the need to perform “expansive document searches”  
4 (*Id.* at 7:5-6). These statements fail to meet the requirement that he must provide  
5 specific facts indicating the nature and extent of the burden. Furthermore, he fails to  
6 specify the time, effort, or cost that would be required to produce the documents.  
7 Though his motion clearly lacks organization as to what generalized statements he  
8 relies upon for each individual request for relief, to the extent Mr. Varadarajan relies  
9 upon unsubstantiated statements regarding his health constraints and caretaking  
10 duties (*id.* at 6:24-7:1) as a basis to quash the Subpoena, they equally fail.

11 Without factual support, Mr. Varadarajan also asserts that, in the alternative to  
12 quashing, the Court should “narrow[] and *sequenc[e] discovery here*” (*id.* at 5:18) –  
13 a strange statement that again *clearly* indicates that his strategy of noncompliance is  
14 being coordinated with Plaintiff – and modify the Subpoena “[g]iven health and  
15 logistical constraints and the nonparty status.” *Id.* at 5:6-7. He offers no rationale or  
16 explanation for this request. He baselessly contends that his deposition should be  
17 conducted remotely and limited to a single three-hour session. (*Id.* at 5:8-9). There is  
18 no justification for modifying the Subpoena or limiting the deposition time. As the  
19

20 an *Ex Parte* Application for a Temporary Protective Order to (1) Stay Nonparty  
21 Subpoenas and (2) Quash Non-Compliant Subpoenas to Robert Nessler and Vasam  
22 Varadarajan (Dkt. 80), which was then denied by Magistrate Judge Jean P.  
23 Rosenbluth. (Dkt. 85). Plaintiff also filed an Opposition to Checkmate’s Motion to  
24 Enforce and Compel Compliance with the Subpoena to Vasam Varadarajan and for  
25 Contempt (Dkt. 104). The fact that Checkmate served notice of the Subpoena less  
26 than 24 hours after it was served is not a basis to quash the Subpoena as Plaintiff was  
27 immediately aware and emailed Checkmate’s counsel objecting to the Subpoena  
28 served on his father at the same residence where Plaintiff resides. *See In re Request  
for Judicial Ass. From Embassy of Arab Rep. of Egypt*, 2021 WL 6112131, at \*2  
(E.D. Mich. Dec. 27, 2021) (declining to quash subpoena based on lack of notice  
where allegedly impacted party “eventually obtained notice, had the opportunity to  
raise objections, and did raise objections”); *Vondersaar v. Starbucks*, 2013 WL  
1915746, at \*2 (N.D. Cal. May 8, 2013) (declining to quash subpoenas where notice  
was given days after service); *Fujikura Ltd. v. Finisar Corp.*, No.  
15MC80110HRLJSC, 2015 WL 5782351, at \*4 (N.D. Cal. Oct. 5, 2015) (finding no  
basis to quash the subpoena for failure to provide pre-service notice when the defect  
did not result in prejudice to the opposing party).

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1 Supreme Court has emphasized, “deposition-discovery rules are to be accorded a  
2 broad and liberal treatment.” *Hickman*, 329 U.S. at 507, 67 S. Ct. 385.

3 As detailed above, Checkmate is entitled to broad and relevant discovery. The  
4 subpoenaed documents and testimony from Mr. Varadarajan are directly related to  
5 the core issues of this case, including the authorship and ownership of the VoiceBite  
6 code, relevant contractual rights, and the VoiceBite merger transaction, and should  
7 not be limited in any respect.

### 8 **E. Cost-Shifting Is Not Justified Under Rule 45**

9 “Rule 45(d)(2)(B)(ii) requires the district court to shift a non-party’s costs of  
10 compliance with a subpoena, *if those costs are significant.*” *Legal Voice v. Stormans*  
11 *Inc.*, 738 F.3d 1178, 1184 (9th Cir. 2013) (emphasis added). “[O]nly two  
12 considerations are relevant to the cost-shifting inquiry: (1) whether the subpoena  
13 imposes expenses on the non-party, and (2) whether those expenses are significant.”  
14 *United States v. McGraw-Hill Companies, Inc.*, 302 F.R.D. 532, 536 (C.D. Cal. 2014)  
15 (internal quotations and citation omitted). If those expenses are considered  
16 “significant,” “the district court must order the party seeking discovery to bear at  
17 least enough of the cost of compliance to render the remainder ‘non-significant.’”  
18 *Legal Voice.*, 738 F.3d at 1184 (citation omitted).

19 As detailed above, Mr. Varadarajan fails to assert *with any specificity* the time,  
20 effort, or cost that would be required to comply with Checkmate’s Subpoena, let  
21 alone evidence that any expense would rise to level of “significant.” Thus, there is  
22 no basis for the Court to order that Checkmate should bear any of the costs associated  
23 with Mr. Varadarajan’s compliance with the Subpoena. *See McGraw-Hill*  
24 *Companies, Inc.*, 302 F.R.D. at 536 (“Without knowing what the non-parties intend  
25 to claim, it would be premature for the Court to catalogue the types of expenses that  
26 fall on either side of the line between expenses and non-expenses.”).



1 **IV. CONCLUSION**

2 For the foregoing reasons, Mr. Varadarajan's Motion for Protective Order and  
3 to Quash or Modify Subpoena should be denied in its entirety.

4  
5 Date: October 31, 2025

Respectfully Submitted,

6 K&L GATES LLP

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8  
9

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**CERTIFICATE OF WORD COUNT**

The undersigned, counsel of record for Checkmate certifies that this brief contains 5,447 words, which complies with the word limit of L.R. 11-6.1.

Date: October 31, 2025

Respectfully submitted,

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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California, over the age of eighteen years, and not a party of the within action. My business address is 10100 Santa Monica Blvd. 8th Floor Los Angeles, CA 90067.

On **October 31, 2025**, I served the foregoing document(s) described as:

- **CHECKMATE.COM INC.'S OPPOSITION TO VASAN VARADARAJAN'S MOTION FOR PROTECTIVE ORDER AND ORDER QUASHING OR MODIFYING THE SUBPOENA**
- **DECLARATION OF REBECCA MAKITALO, EXHIBITS A-P**

on the interested parties in this action as follows:

Vasan Varadarajan  
12615 193rd Street  
Cerritos, CA 90703  
Email: vsvconsult@gmail.com

☒ **(BY ELECTRONIC MAIL)** Pursuant to C.R.C. 2.251 or agreement by all parties, I served the described document(s) by emailing it to each of the aforementioned electronic mail addresses and the transmission was reported as complete and without error. My email address is Rebecca.makitalo@klgates.com.

☒ **(VIA U.S. MAIL)** In accordance with the regular mailing collection and processing practices of this office, with which I am readily familiar, by means of which mail is deposited with the United States Postal Service at Los Angeles, California that same day in the ordinary course of business, I deposited such sealed envelope, with postage thereon fully prepaid, for collection and mailing on this same date following ordinary business practices, addressed as set forth above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 31, 2025**, at Los Angeles, California.

/s/ Rebecca Makitalo

Rebecca Makitalo